

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ORLANDO CRUZ	:	CIV. NO.
	:	
Plaintiff,	:	02-3418
	:	
v.	:	
	:	
LT. WOERTZ ,	:	
POLICE OFFICER KELLY, POLICE	:	
OFFICER ACQUAVIVA, and POLICE	:	
OFFICER FRYSSINGER,	:	
Defendants.	:	

ORDER

And now, to wit, this day of , 2003, upon consideration of Defendants' Motion in Limine to preclude evidence of Defendants' prior complaints and/or allegations of misconduct pertaining to the use of force, and all responses thereto,

It is hereby Ordered and Decreed that said Motion is Granted. Plaintiff is precluded from offering any documentary or testimonial evidence at trial concerning Defendants' prior complaints and/or allegations of misconduct pertaining to the use of force.

BY THE COURT:

**_____
BERLE M. SCHILLER, J.**

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LT. WOERTZ ,	:	
POLICE OFFICER KELLY, POLICE	:	
OFFICER ACQUAVIVA, and POLICE	:	
OFFICER FRYSSINGER,	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE OF DEFENDANTS'
PRIOR COMPLAINTS AND/OR ALLEGATIONS OF MISCONDUCT
PERTAINING TO THE USE OF FORCE**

TO THE CLERK OF THE COURT:

Defendants, by and through the undersigned counsel, Robin B. Arnold, hereby file a Motion in Limine to Preclude Evidence of Defendants' Prior Complaints and/or Allegations of Misconduct Pertaining to the Use of Force. A Memorandum of Law dated October 22, 2003 is attached hereto.

Respectfully Submitted,

Robin B. Arnold
Deputy City Solicitor
Attorney I.D. #59477
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
(215) 683-5447
(215) 683-5347 (Fax)

Dated: 10/22/03

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STATEMENT OF FACTS

Plaintiff Orlando Cruz has filed a civil rights action against the defendants, alleging that they used excessive force against him on June 4, 2000. At the time of the incident, Defendants were lawfully at the home of the plaintiff, responding to a report of a woman screaming disturbance. During the course of the encounter, plaintiff was verbally and physically abusive toward the officers. He eventually struck Police Officer Acquaviva in the face, and then resisted the efforts of the officers to secure him and place him into custody. Plaintiff was charged with assault-related crimes against the police, and was found guilty of simple assault.

It is anticipated that plaintiff will seek to introduce at trial evidence of prior allegations against the defendants regarding allegations of misconduct in the use of force. Defendants respectfully submit this Memorandum of Law in support of their motion to preclude plaintiff

from offering and/or introducing such evidence, either in the form of testimony or documentation, at trial.

LEGAL ARGUMENT

The Federal Rules of Evidence “generally prohibit the introduction of evidence of extrinsic acts that might adversely reflect on the actor’s character, unless that evidence bears upon a relevant issue in the case such as motive, opportunity, or knowledge.” See Federal Rule of Civil Procedure 404(b).¹ Prior bad acts may not be admitted to prove that a person acted in similar fashion in the case at hand. See Lataille v. Ponte, 754 F.2d 33 (1st Cir. 1984). Applying this principle, courts have consistently held that, in a §1983 action alleging police misconduct, a plaintiff may not introduce evidence that the defendant police officer engaged in other acts of misconduct. See, e.g., Ricketts v. City of Hartford, 74 F.3d 1397, 1414-15 (2d Cir. 1996); Hopson v. Fredericksen, 961 F.2d 1374, 1379 (8th Cir. 1992) (court upheld lower court’s decision to exclude evidence of internal police documents concerning prior allegations of prior abuse by defendant-police officers, where such evidence was designed to establish that the defendants engaged in similar conduct against the plaintiff); Berkovich v. Hicks, 922 F.2d 1018, 1022-23 (2d Cir. 1991); King v. Macri, 800 F. Supp. 1157, 1161-62 (S.D.N.Y. 1992); Wallace v. Hano, 1992 WL 230139 at **6-8 (S.D.N.Y. 1991); see also United States v. Booker, 1997 WL 214850 at **2-3 (E.D. Pa. 1997) (prohibiting criminal defendant from admitting IAD documents concerning alleged misconduct by arresting police officer).

The rationale of these cases is readily applicable to the instant action, which involves claims of misconduct against police officers. Plaintiff’s objective in seeking to admit

¹ Fed.R.Evid. 404(b) in pertinent part provides: Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,...

defendants' prior history regarding the use of force is to establish that, on the basis of this past history of the use of force, including allegations of excessive abuse, whether substantiated or not, the defendants acted unlawfully in the use of force on the plaintiff in this case. This is impermissible under Fed.R.Evid.P. 404(b). Furthermore, the probative value of such evidence would be substantially outweighed by the unfair prejudice to the defendants that would result. See Fed.R.Evid. 403. For these reasons, plaintiff must be precluded from introducing such evidence at trial.

Wherefore, Defendants respectfully request that this Court grant Defendants' Motion in Limine and enter the attached Order.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

Robin B. Arnold hereby certifies that service of a true and correct copy of the Defendants' Motion in Limine to Preclude evidence of Defendants' prior complaints and/or allegations of misconduct pertaining to the use of force was made on the 22nd day of October, 2003, to the counsel of record by First Class United States Mail.

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